IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2859 OF 2005

1. Mr Prakash V. Phadnis and ors. Petitioners (Accused)

Vs

1.The State of Maharashtra,
2.Mrs Sushila J.Kapadia,.. Respondents (No.2-Compt)

Mr A.P.Mundargi, senior counsel, with Mr Prakash Naik i/b Mr A.A.Walawalkar and Bipin Joshi, for the petitioners-accused.
Mrs M.H.Mhatre, APP for the respondent-State.
Mr V.A.Thorat, senior counsel with Mrs V.V.Thorat, for respondent no.2.

CORAM : D.B.BHOSALE, J.

DATED : 23rd JUNE, 2006

P.C.:

1. Heard Mr.Mundargi, learned senior counsel for the petitioners and Mr.Thorat, learned senior counsel for respondent no.2 and the learned APP for respondent-State.

2. This petition is directed against the judgment and order dated 25.7.2005 disposing of the two criminal revision applications, bearing Nos 169 of 2004 and 2 of 2005 filed by the petitioners-accused and respondent no.2-complainant respectively (for short "accused" and "complainant"). Both the revisions were directed against the judgment and order dated 18.10.2004, by which the discharge application

under section 245(2) of Cr.P.C.(Exhibit-23) filed by the accused was rejected and the charge for the offence under section 466 read with 34 of IPC was ordered to be framed against the accused.

3. The complainant had filed a complaint against all the accused under sections 465, 466, 468, 371 read with 34 and 120-B of IPC. However, the learned Magistrate issued process only under section 466 read with 34 of IPC vide order dated 20.4.2000. The accused on 26.8.2002 had filed the application Exhibit-23. The learned Magistrate recorded the evidence of the complainant between May and September, 2004, and thereafter, rejected the application Exhibit-23 vide order 18.10.2004. It is against that order (dated 18.10.2004), both, the complainant and the accused preferred the aforementioned revision applications before the Sessions Court. The complainant in his revision sought framing of charges even under sections 468, 471 and 120-B of IPC.

4. The case of the complainant, as revealed from the complaint, is that the properties, namely, CTS Nos 255/SA, 546 and private road bearing CTS no.545 leading to CTS no.255/A were originally owned by her mother Smt. L.D.Rege. Her mother expired on 30.7.1984. During her life time, she had gifted all

the properties to the complainant. Out of the aforesaid properties, Smt. L.D.Rege had sold 1936 sq.meters of land out of CTS No.546 by a registered sale deed dated 31.8.1983 to M/s.Shilpa Constructions, the company of the accused. In the sale deed the private road bearing CTS No.545 was shown as eastern boundary while describing the property that was sold to Shilpa Constructions. C.T.S No.545 was retained by Smt Rege. It appears that M/s Shilpa Construction, then released their rights, title and interest in the purchased property, viz. CTS No.546, admeasuring 1936 sq.meter in favour of M/s Panorama Resorts by executing release deed dated 26.7.1984. In the release deed also C.T.S.No.545 was referred to as a private road and for showing the boundary of the property released in favour of Panorama Resorts.

5. The allegation made in the complaint against the accused was that they hatched a conspiracy in order to grab the complainant's property, viz. CTS No.545 and forged the extracts of Index II issued by the Sub Registrar by making false addition of C.T.S.No.545 in the said extracts (Exhibit 101 and 102). It is further alleged that they fraudulently used those extracts as genuine by producing them before CSO, Mahabaleshwar requesting him to enter their name (M/s Panorama Resorts) in the property

register card of CTS NO.545. Mr Mundargi, learned senior counsel for the accused, fairly stated that apparently Exhibits 101 and 102, i.e.- Index II forms, show forgery. However, the question was raised as to who is responsible for it. Original Index II forms, bearing Exhibits 95 and 96, were also produced on record. A perusal of Exhibits 101 and 102 clearly shows interpolation in a different ink and different handwriting by which CTS No.545 was also added along with CTS No.546. It further reveals that the accused claim ownership of CTS No.545 for which civil litigation is also pending.

6. Mr Mundargi, learned senior counsel for the accused, took me through the evidence of the complainant recorded before charge and endeavoured to demonstrate that Exhibits 101 and 102, the forged documents, were not used by the accused at all for any purpose whatsoever. The application for entering the name of the accused in the property register, according to Mr Mundargi, was made on the basis of the conveyance deed and the release deed. He further submitted that even though the forged Index II form -Exhibit 101 was issued in the name of accused no.1 and Index II form - Exhibit 102 was issued in the name of accused no.2,they had not applied for copies of the same. After taking me through the evidence of the

complainant and particularly paragraph 10 thereof, he submitted that the forged documents (Exhibits 101 and 102) were not used by the accused at all. The complainant in her evidence has stated that there is no document on record showing that Panorama Resorts produced Index II for entering their name and that she has no documentary evidence to show that the said Index was used for getting their name to be recorded in the property register. It appears that the forgery and finding of those documents (Exhibits 101 and 102) in the CSO record has not been disputed by the accused. Keeping that in view, in my opinion, the complainant may during trial after charge examine the concerned staff in the City Survey and Sub-Registrar's office to prove the allegation constituting the offence under sections 466, 468 and 471. The complainant has denied that the entry of Panorama Resorts in the property card was made on the basis of the conveyance deed and not on the basis of the forged Index II. The complainant came to know about the forgery some time in 1989, and thereafter she inspected the record in which it was revealed that the documents (Exhibits 101 and 102) were forged. Merely because, at this stage, she does not know who had prepared those documents and that she can not name anyone for that act, in my opinion, will not help them to contend that there is no material to constitute the

offences under sections 466, 468 and 471 of IPC. The stage to prove these allegations is yet to come in the present case. It cannot be overlooked, at this stage, that accused only were to be benefited by those entries and in fact those documents were found on the record of City Survey Office which was called in the court. Moreover, the conveyance deed and the release deed prima facie show that CTS No.545 was not sold to the accused.

7. Mr Mundargi next submitted that in any case it is not open to frame the charge under sections 468 and 471 since the process was issued only under section 466 read with 34 of IPC and that order was never challenged by the complainant. I perused the entire material placed before me. It is true that the order of issue of process dated 20.4.2000 was not challenged by the complainant at that stage. After issue of process, the evidence of the complainant before charge was recorded. The complainant was cross-examined by the accused at length. In paragraph 4 of the examination-in-chief she has narrated the circumstances in which she was forced to file the complaint under sections 466, 468, 471 of IPC and how the acts of the accused constitute those offences. During cross-examination the accused did their best and made all efforts to demonstrate that the

provisions of sections 468 and 471 are not at all attracted and that even the facts do not disclose an offence under section 466. It appears that after recording of evidence before charge the learned Magistrate, while disposing of the application (Exhibit-23), passed the order of framing the charge only under section 466 red with 34 of IPC. Feeling aggrieved by that order, as stated earlier, both the complainant and the accused, preferred revision applications and they were disposed of by the impugned judgment dated 25.7.2005. It is against this backdrop, I am afraid, it is not open to the accused to make a grievance that no order of issue of process was challenged by the complainant. The law is well settled that there can be no order of discharge unless the evidence of the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded in the light of evidence, that no case has been made out. The trial in a warrant case starts with the framing of charge, prior to it, the proceedings are only an enquiry. This is settled by the Apex Court in **Ratilal Bhanji Vs State of Maharashtra -AIR 1979 Supreme Court 94**. The judgment relied upon by Mr Mundargi in **Sheoraj Vs. Emperor, AIR (35) 1948 A**llahabad 46 has no application to the facts of the present case.

8. Keeping the overall facts and circumstances of the case in view and considering that there is prima facie material to show that Exhibits 101 and 102 are forged documents and they were found on record of CSO and seems to have been used for entering the name of Panorama Resorts in the property register, prima facie an offence under sections 466,468,471 for framing charge has been made out. The application is, accordingly, dismissed. The trial Court shall proceed and decide the case on merits in accordance with law and uninfluenced by the observations made in this order as also in the orders passed by the courts below.

(D.B.Bhosale,J.)